

(As of February 20, 2001)

**Section 6-1516. Zoning Board of Appeals --**

There shall be a zoning board of appeals which shall consist of five members. The board shall be governed by the provisions of Section 13-103 of this charter. The zoning board of appeals shall hear<sup>27</sup> and determine appeals from the actions of the director in the administration of the zoning ordinances, including variances therefrom, subdivision ordinances and any rules and regulations adopted pursuant to either.<sup>28</sup> An appeal shall be sustained only if the board finds that the director's action was based on an erroneous finding of a material fact, or that the director had acted in an arbitrary or capricious manner or had manifestly abused discretion.<sup>29</sup> (1992 General Election Charter Amendment Question No. 5; 1998 General Election Charter Amendment Question No. 1(III))

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<sup>27</sup>Agency review boards are often authorized to conduct their own evidentiary hearings. Administrative agencies may hear and determine facts, and decide the application of law to the ascertained facts. The receipt of oral and documentary evidence, as well as the cross-examination of witnesses, is appropriate at zoning board of appeals hearings. Price v. Zoning Board of Appeals of the City and County of Honolulu, 77 Hawai'i 168, 883 P.2d 629 (1994).

<sup>28</sup>Zoning board of appeals review is limited to zoning and subdivision matters only. Swire Properties (Hawaii), Ltd. v. Zoning Board of Appeals of the City and County of Honolulu, 73 Haw. 1, 826 P.2d 876 (1992).

<sup>29</sup>Zoning board of appeals may not issue cease and desist orders for violations of the Land Use Ordinance, but is restricted to either sustaining or denying appeals from orders issued by the director. Windward Marine Resort, Inc. v. Sullivan, 86 Hawai'i 171, 948 P.2d 592 (1997).